

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.5292, 5322, 5350, 5365, 5375, 5397 & 5436 of 2018

COMMON ORDER:

In these Civil Revision Petitions same issue arises for consideration and so they are being taken up and disposed of together.

2. The petitioner/s in these Revision Petitions are plaintiffs in O.S.Nos.397, 399, 400, 402, 406, 405 and 401 of 2016 before the I Additional Junior Civil Judge, at Rajamahendravaram. The said suits were all filed for specific performance of different agreements of sale in respect of separate items of property located in Narasapuram village of Korukonda Mandal of East Godavari District.

3. It is the contention of the petitioner/s that as per the terms of the respective agreements of sale, possession was delivered to the petitioner/s, that the petitioner/s were always ready and willing to perform their part of contract and obtain registered sale deeds; but since the value of the properties which are subject matter of these suits having increased recently, the respondents attempted to dispossess the petitioner/s from the said property which the petitioner/s resisted; that they have also filed complaint before the police of Korukonda, but the police refused to take action saying that the dispute is of civil nature; and therefore they shall be granted relief of specific performance of the respective agreements of sale and permanent prohibitory injunctions restraining respondent/s from interfering with the

petitioner/s peaceful possession and enjoyment of the plaint schedule property in each suit.

4. The petitioner/s also filed I.A.No.592/2016 in O.S.No.397/2016 , I.A.No.588/2016 in O.S.No.401 of 2016 , I.A.No. 587 in O.S.No.402/2016, I.A.No.584/2016 in O.S.NO.405 /2016, I.A.No.581/2016 in O.S.No.406/2016, I.A.No.589/2016 in O.S.No.399/2016 and I.A.No. 590/2016 in O.S.No.400 of 2016 under Order 39 Rules 1 and 2 and sought for a temporary injunction restraining respective respondents from interfering with their alleged possession and enjoyment of the plaint schedule property.

5. In the I.As., the petitioner/s reiterated the contents of the plaint and marked 'P' series exhibits.

6. On the basis of the allegations contained in the said I.As., initially *ex parte* interim injunction was granted in favour of petitioner/s on 23-06-2016.

7. Counter affidavits were filed by the respondents refuting the allegations of the petitioner/s and taking the plea that the respective respondents were in physical possession and enjoyment of the suit schedule properties and that the petitioner/s are not in possession of the said properties. It is also contended that all the documents filed by the petitioner/s are fabricated, that there is no *prima facie* case in favour of the petitioner/s and balance of

convenience did not warrant grant of temporary injunctions in the I.As.

8. It is important to note that in all these cases, vide separate orders passed on 23-08-2016, the trial court turned down the request for marking the respective agreements of sale and delivery receipts on the ground that they were insufficiently stamped and sent them to the office of the concerned Subject Registrar for collection of deficit stamp duty and penalty and so the said agreements of sale and delivery receipts were not marked.

9. However, without waiting for the documents to be returned to the Court, the trial Court vide separate orders, dismissed the I.As. filed by the petitioner/s for temporary injunction by vacating *ex parte* injunction order granted wherein on 23-06-2016 by giving finding that the other documents exhibited by the petitioner/s did not prove the possession and enjoyment of the petitioner/s over the plaint schedule properties.

10. Aggrieved thereby, the petitioner/s filed C.M.A.Nos.33 to 39 of 2016 before the V Additional District Judge, Rajamahendravaram.

11. The petitioner/s filed u/s.151 CPC, I.A.No.149/2018 in CMA No.33 of 2016, I.A.No.151/2018 in CMA No.34 of 2016, I.A.No.153/2018 in CMA No.35/2016, I.A.No.155/2018 in CMA.No.36/2016, I.A.No.157/2018 in CMA.No.37 of 2016,

I.A.No.159/2018 in CMA.No.38/2016 and I.A.No.161/2018 in CMA No.39/2016 contending that the respective agreements of sale and delivery receipts which had been sent for impounding to the Sub Registrar Office had since been returned back to the trial court after impounding; that these documents were not before the trial Court when it decided I.As; that these are crucial documents which would prove the possession of the petitioner/s over the subject properties; since they have now been impounded and adequate stamp duty had been paid thereon, they have now become admissible evidence and the same be marked in the CMAs. and considered at the time of deciding the CMAs.

12. However, the lower Appellate Court without deciding these applications first, dismissed the CMAs by separate order on 13-07-2018 stating that the respective agreements of sale under which the petitioner/s are claiming to have purchased the property have not been filed before the Court and admitted in evidence; and so the petitioner/s has/have not made out any *prima facie* case; that the very basis of the claim of the petitioner/s is that they came into the possession of the property by virtue of the respective agreements of sale which are not before the Court to appreciate, and other documents are of no use to petitioner/s to sustain their claim for injunction; and therefore, the petitioners are not entitled to any relief in the appeal.

13. After dismissing the CMAs. in the above manner, the lower appellate Court then dismissed on 13-7-2018 the applications to

receive the agreements of sale and delivery receipts i.e. I.A.No.149/2018 in CMA No.33 of 2016, I.A.No.151/2018 in CMA No.34 of 2016, I.A.No.153/2018 in CMA No.35/2016, I.A.No.155/2018 in CMA.No.36/2016, I.A.No.157/2018 in CMA.No.37 of 2016, I.A.No.159/2018 in CMA.No.38/2016 and I.A.No.161/2018 in CMA No.39/2016 saying that once the CMAs are disposed of, these I.As. had become infructuous. It also made further observation that if the petitioner/s want to file evidence, they should follow procedure as contemplated under CPC but cannot file simply petitions under Section 151 CPC.

14. Challenging the orders in the CMAs., these Revisions Petitions are filed.

15. Learned counsel for the petitioner/s contended that the lower appellate Court erred in dismissing the applications to receive the respective agreements of sale and the delivery receipts and ought to have decided the said applications before it decided the CMAs; that the respective agreements of sale and delivery receipts had been sent for impounding to the Sub Registrar Office by the trial Court and they were not available before the trial Court, but by the time the CMAs came up for hearing, those documents had been returned to the trial Court after impounding and after payment of proper stamp duty; so they became admissible in evidence; and when they are sought to be relied upon before lower appellate Court by filing above I.A.Nos.149/2018 and batch, they ought to have been taken into

account by the lower appellate Court before deciding the CMAs. It is also contended that assuming for the sake of argument that Order 41 Rule 27 CPC. applies to the said applications and the said provision of law was not quoted, merely because Section 151 CPC, a wrong provision of law is quoted, the applications I.A.Nos.149 of 2018 and batch, which filed in the CMAs, could not have been dismissed. It is further contended that the orders passed by the lower appellate Court in the CMAs. are therefore to be treated as perverse and unsustainable and the matters are to be remanded back to the trial Court for fresh consideration by directing the trial Court to take into account the respective agreements of sale and delivery receipts which are now available with the trial Court.

16. Sri Ch. Pushyam Kiran, learned counsel for the respective respondents in the CMAs. however supported the order passed by the Court below and in the I.A. Nos.149 of 2018 and batch, passed in the CMAs on 13-07-2018. According to him, the correct provision of law under which the I.A. Nos.149 of 2018 and batch should have been filed was Order 41 Rule 27 CPC and not Section 151 CPC and the Court below was right in dismissing the said applications on the said ground. He also contended that the petitioners did not make out any *prima facie* case before the Courts below and the Courts below were right in dismissing the I.As for temporary injunction as well as the CMAs.

17. I have noted the contentions of both sides.

18. In the instant case, in each of the suits, the petitioner/s have relied upon agreements of sale and documents evidencing delivery of possession styled as delivery receipts in support of the petitioner/s claim for relief of specific performance and perpetual injunction. As stated above on the ground that these documents were insufficiently stamped, they had been referred to the office of the local Sub Registrar for impounding by the trial Court by separate order dt.23-08-2016.

19. Later, in 2018, those documents were returned by the Sub Registrar Office after impounding and collection of deficit stamp duty. On payment of requisite stamp duty and penalty, they therefore became admissible in evidence.

20. But, before that event, the trial Court had rejected the applications for temporary injunction I.A.No.592 of 2016 and batch by separate orders dt.29-09-2016.

21. Petitioner/s had questioned the same in CMAs and the documents i.e. respective agreements of sale and possession delivery receipts which had been returned to the trial Court were sought to be marked by the petitioner/s by filing I.A.Nos.149 of 2018 and batch before the lower Appellate Court in the CMAs.

22. As per Or.XLIII R.2 CPC, the rules of Or.XLI are made applicable to appeals from orders. So petitioner/s ought to have mentioned the said provision of law instead of Sec.151 CPC.

23. But the lower Appellate Court ought not to have dismissed them on the ground that the correct provision of law is not quoted therein. This is because of the settled law that mere quoting of wrong legal provision is no ground to dismiss an application if the application can be traced to some other provision of law.(**State of Karnataka Vs. Krishnaji Srinivas Kulkarni and others¹**, **Kedar Shashikanth Deshpande and others Vs. Bhore Municipal Council and others²** and **Vikram Singh Junior High School Vs. District Magistrate (Fin. & Rev.) and others³**.)

24. More over, it was incumbent on the part of the lower Appellate Court to decide the applications to receive documents before it decided the CMAs and along with the CMAs (see **State of Rajasthan v.T.N.Sahanai⁴**.)

25. But in the instant cases, the lower Appellate Court passed orders in the CMAs first and then passed orders in the IA Nos.148 of 2018 and batch, which it ought not to have done.

26. Thereby valuable material which the petitioner intended to rely upon in the CMAs came to be ignored by the lower Appellate Court causing serious prejudice to the petitioner/s.

¹ (1994) 2 S.C.C. 558

² (2011) 2 C.C.C. 654

³ (2002) 9 S.C.C. 509

⁴ (2001) 10 SCC 619

27. In **Surya Dev Rai v. Ram Chander Rai**⁵, the Supreme court has laid down the scope of power under Art.227 of the Constitution of India in the following terms:

“ 38. ...

(4) *Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.*

(5) *Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.*

(6) *A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.*

(7) *The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling*

⁵ (2003) 6 SCC 675

for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.(emphasis supplied)

28. In **Jai Singh and others v. Municipal Corporation of Delhi and another**⁶, the Supreme Court has held that jurisdiction under Article 227 of the Constitution of India should be exercised by the High Court in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice and the sole objective is to ensure that there is no miscarriage of justice.

29. In my considered opinion, the instant batch of cases fall within the parameters of above two decisions since the lower appellate court failed to exercise a jurisdiction which it does have/ and in a sense jurisdiction though available, was exercised by it in a manner not permitted by law, and failure of justice or grave injustice has occasioned thereby. If the orders of the Courts below are allowed to sustain, it would be result in a travesty of justice.

30. Therefore, (i) the orders dt.29-09-2016 passed in I.A.No.592/2016 in O.S.No.397/2016, I.A.No.588/2016 in

⁶ (2010) 9 S.C.C. 385

O.S.No.401 of 2016, I.A.No.587 in O.S.No.402/2016, I.A.No. 584/2016 in O.S.No.405/2016, I.A.No.581/2016 in O.S.No.406/2016, I.A.No.589/2016 in O.S.No.399/2016 and I.A.No.590/2016 in O.S.No. 400 of 2016 as confirmed by order dt.13-07-2018 in C.M.A.Nos.33 to 39 of 2016 by the lower appellate Court are set aside;

(ii) orders dt.13-07-2018 in I.A.No.149/2018 in CMA No.33 of 2016, I.A.No.151/2018 in CMA No.34 of 2016, I.A.No.153/2018 in CMA No.35/2016, I.A.No.155/2018 in CMA.No.36/2016, I.A.No.157/2018 in CMA.No.37 of 2016, I.A.No.159/2018 in CMA.No.38/2016 and I.A.No.161/2018 in CMA No.39/2016 are all set aside;

(iii) I.A.No.592/2016 in O.S.No.397/2016, I.A.No.588/2016 in O.S.No.401 of 2016, I.A.No.587 in O.S.No.402/2016, I.A.No. 584/2016 in O.S.No.405/2016, I.A.No.581/2016 in O.S.No.406/2016, I.A.No.589/2016 in O.S.No.399/2016 and I.A.No.590/2016 in O.S.No.400 of 2016 are restored to the file of the trial Court; and

(iv) the trial Court is directed to decide the said applications, within four weeks from today, after considering the respective agreements of sale, delivery receipts and other evidence which is produced by both parties.

(v) In the event, the existing crop in the land has to be harvested before the I.As. are decided, the trial Court shall appoint an Advocate Commissioner and get the paddy in the suit schedule properties

harvested in the presence of both parties and the Advocate Commissioner shall deposit the produce to the credit of the suit which shall be paid to the successful party in the suits.

The CRPs are allowed as above. No costs.

31. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-11-2018
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